

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'SMC' KOLKATA

[Before Hon'ble Shri J.Sudhakar Reddy, AM]

ITA No.851/Kol/2018
Assessment Year : **2014-15**Shri Sunil Kumar Ladha
Kolkata
(PAN: AAXPL 1536 B)
(Appellant)

-versus-

I.T.O., Ward-36(4),
Kolkata

(Respondent)

For the Appellant: Shri Anil Kochar, Advocate
For the Respondent: Shri Raja Sengupta, JCIT

Date of Hearing : 01.10.2018

Date of Pronouncement : 05.10.2018.

ORDER**PER J.SUDHAKAR REDDY, AM:**

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax-(A)-10, Kolkata dated 28.03.2018 passed u/s 250 of the Income Tax Act, 1961 (the 'Act ') relating to A.Y. 2014-15.

2. The sole issue that arises for my adjudication is whether the Assessing Officer was right in rejecting the claim of the assessee that he had earned Long Term Capital Gains on purchase and sale of the shares of M/s kailash Auto Finance Ltd. The AO based on a general report and modus operandi adopted generally in these cases and on general observations has concluded that the assessee has claimed bogus long term capital gain. He made an addition of the entire sale proceeds of the shares as income and rejected the claim of exemption made u/s 10(38) of the Act. The evidence produced by the assessee in support of the genuineness of the transaction was rejected.

3. The assessee carried the matter in appeal and the Id. CIT(A)-10, Kolkata, had upheld the addition. The Id. CIT(A) has in his order relied upon "circumstantial evidence" and "human probabilities" to uphold the findings of the AO. He also relied on the so called "rules of suspicious transaction". No direct material was found to controvert the evidence filed by the assessee, in support of the genuineness of the

transactions. In other words, the overwhelming evidence filed by the assessee remains unchallenged and uncontroverted. The entire conclusions drawn by the revenue authorities, are based on a common report of the Director of Investigation, Kolkata, which was general in nature and not specific to any assessee. The assessee was not confronted with any statement or material alleged to be the basis of the report of the Investigation Wing of the department and which were the basis on which conclusion were drawn against the assessee. Copy of the report was also not given.

4. Under the circumstances, in a number of cases this bench of the Tribunal has consistently held that decision in all such cases should be based on evidence and not on generalisation, human probabilities, suspicion, conjectures and surmises. We have in all cases deleted such additions. Some of the cases were detailed finding which are listed below :-

Sl.No	ITA Nos.	Name of the Assessee	Date of order /Judgment
1.	1236-1237/K/17 ITAT - Kolkata	Manish Kumar Baid & Others vs ACIT	18.08.2017
2	443/Kol/2017	Kiran Kothari (HUF) vs ITO	15.11.2017
3.	22 of 2009 Calcutta High Court	CIT, Kolkata-III vs Bhagwati Prasad Agarwal	29.04.2009
4.	456 if 2007 Bombay High Court	CIT vs Shri Mukhesh Ratilal Marolia	07.09.2011
5.	18 of 2017 Punjab and Haryana High Court	Pr. C.I.T. (Central)Ludhiana vs Sh.Hitesh Gandhi,	16.02.2017
6.	95 of 2017 Punjab and Haryana High Court	Pr. C.I.T. vs Prem Pal Gandhi	18.01.2018.
7.	2281/Kol/2017 ITAT - Kolkata	Navneet Agarwal, Legal Heir of Late Kiran Agarwal vs ITO,Ward- 35(3),Calcutta	20.07.2018

5. I am bound by the proposition of law laid down in these case law. They are squarely applicable to the facts of the case. The Id. Departmental Representative, though not leaving his ground, could not controvert the claim of the Id. Counsel for

the assessee that the issue in question is covered by the above cited decisions of the Hon'ble High Courts and the ITAT.

6. The Id. Departmental Representative relied on the judgment of the Hon'ble Supreme Court in the case of Securities and Exchange Board of India vs Rakhi Trading Private Ltd in Civil Appeal No.1969 of 2011 with Civil Appeal Nos.3174-3177 of 2001 and Civil Appeal No.3180 of 2011. The Id. Counsel for the assessee submits that there is no surviving order of SEBI against the assessee or the company, the script of which was purchased and sold by the assessee. When there is no surviving adverse order of SEBI, against the claim of the assessee, the judgment of the Hon'ble Supreme Court cannot be applied to the facts of this case.

7. In view of the above discussion the addition in question is deleted and the appeal of the assessee is allowed.

8. In the result the appeal of the assessee is allowed.

Order pronounced in the Court on 05.10.2018.

Sd/-

[J.Sudhakar Reddy]
Accountant Member

Dated : 05.10.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1. Shri Sunil Kumar Ladha, C/o Sri S.L.Kochar, Advocate, 5, Ashutosh Chowdhury Avenue, Kolkata-700019.
2. I.T.O., Ward-36(4), Kolkata.
3. C.I.T.(A)- 10, Kolkata 4. C.I.T-12, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary
Head of Office/D.D.O, ITAT Kolkata Benches

